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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL TAFT PUCKETT,

Defendant and Appellant.

D052531

(Super. Ct. No. SCD208570)

APPEAL from a judgment of the Superior Court of San Diego County, David J. Daniels, Judge. Appeal dismissed.

Michael Puckett pleaded guilty to one count of unlawfully selling, furnishing, administering, giving away, and offering to sell cocaine base (Health & Saf. Code, § 11352, subd. (a)). In his written change of plea, Puckett admitted the truth of one strike prior (Pen. Code, §§ 667, subds. (b)-(i), 1170.12 & 668), three prison priors (Pen. Code, §§ 667.5, subd. (b) & 668), and two nonprobationary felony priors (Pen. Code, § 1203, subd. (e)(4)). The trial court struck Puckett's two nonprobationary felony priors and three

prison priors. Puckett was sentenced to a prison term of six years; the low term of three years doubled pursuant to the admitted strike prior.

Puckett filed a notice of appeal and was denied a certificate of probable cause. He appeals, contending insufficient evidence was presented to support the use of his strike prior for sentencing enhancement purposes. We disagree and dismiss the appeal.

### STATEMENT OF FACTS

Puckett did unlawfully sell, furnish, administer, give away, and offer to sell a small, but usable quantity of cocaine base.

### DISCUSSION

Puckett contends insufficient evidence was presented to support using his strike prior for sentencing enhancement purposes under Penal Code sections 667, subdivisions (b)-(i), 1170.12 and 668. Puckett filed a notice of appeal and was denied a certificate of probable cause.

A defendant may not appeal from a judgment of conviction upon a plea of guilty unless he or she has filed a statement showing reasonable grounds for appeal and the trial court has executed and filed a certificate of probable cause. (Pen. Code, § 1237.5, subd. (b); *People v. Cuevas* (2008) 44 Cal.4th 374, 379; *People v. French* (2008) 43 Cal.4th 36, 43; *People v. Shelton* (2006) 37 Cal.4th 759, 766.) The purpose of this procedural limitation is "to weed out frivolous and vexatious appeals from pleas of guilty or no contest, before clerical and judicial resources are wasted." (*People v. Buttram* (2003) 30 Cal.4th 773, 790 (*Buttram*).) A certificate of probable cause is not required if the appeal is based upon grounds that arose after entry of the plea and that do not affect

the validity of the plea. (Cal. Rules of Court, rule 8.304(b)(4)(B); *French, supra*, 43 Cal.4th at p. 43.)

In determining the applicability of section 1237.5 to a challenge of a sentence imposed after a guilty plea, "the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made." (*People v. Ribero* (1971) 4 Cal.3d 55, 63.) Thus, the "critical inquiry is whether a challenge to the sentence is in substance a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*Buttram, supra*, 30 Cal.4th at p. 782.)

Here, Puckett pleaded guilty and was denied a certificate of probable cause. His appeal, contending he "never admitted suffering a strike prior and there was no evidence presented to that effect," is not cognizable. We have no authority to review Puckett's contention because he was denied a certificate of probable cause.

"A guilty plea 'concedes that the prosecution possesses legally admissible evidence sufficient to prove defendant's guilt beyond a reasonable doubt.' [Citation.] " (*People v. Thurman* (2007) 157 Cal.App.4th 36, 44.) A guilty plea further " 'waives any right to raise questions regarding the evidence including its sufficiency or admissibility.' [Citation.]" (*Ibid.*) Here, by admitting the strike prior in his guilty plea form, Puckett waived his right to question the evidentiary support for this conviction. He cannot now, on appeal, challenge the sufficiency of the evidence for this strike prior without a certificate of probable cause.

In sum, we have no authority to review Puckett's claim because he was denied a certificate of probable cause and his appeal goes to the validity of his plea.

DISPOSITION

The appeal is dismissed.

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HUFFMAN, Acting P. J.

WE CONCUR:

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NARES, J.

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AARON, J.